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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA *ex*
15 *rel.* [UNDER SEAL],

16 Plaintiff[s],

17 v.

18 [UNDER SEAL],

19 Defendant[s].

20 No. CV 17-03263-PA (JCx)

21 REQUEST OF THE UNITED STATES
TO PARTIALLY UNSEAL CASE;
DECLARATION OF FRANK D.
KORTUM

22 [FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C.
§§ 3730(b)(2) AND (3)]

23 [LODGED CONCURRENTLY UNDER
SEAL: [PROPOSED] ORDER]

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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA and
15 STATE OF CALIFORNIA *ex rel.* M.
LAKHANI,

16 Plaintiffs,

17 v.

18 VINROD K. GUPTA, M.D., THE
19 HEART CENTER OF SOUTHERN
CALIFORNIA,

20 Defendants.

No. CV 17-03263-PA (JCx)

REQUEST OF THE UNITED STATES
TO PARTIALLY UNSEAL CASE;
DECLARATION OF FRANK D.
KORTUM

[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C.
§§ 3730(b)(2) AND (3)]

[LODGED CONCURRENTLY UNDER
SEAL: [PROPOSED] ORDER]

Although this Court dismissed this action following the United States' declination to intervene in the action, there has been an outstanding issue of whether the Court should: (1) unseal the Complaint filed by the *qui tam* plaintiff M. Lakhani ("Relator"); and (2) maintain under seal all other papers filed or lodged to date filed by the United States, except for the United States Notice of Election to Decline Intervention.

The sealing provisions of the federal False Claims Act are for the sole benefit of the United States. *See* 31 U.S.C. §§ 3730(b)(2) and (3). The Fourth Circuit recognized that the sealing provisions of the FCA: (1) permit the United States to determine whether it already was investigating the fraud allegations; (2) permit the United States to investigate the allegations to decide whether to intervene; (3) prevent an alleged fraudster from being tipped off about an investigation; and (4) protect the reputation of a defendant in that the defendant is named in a fraud action brought in the name of the United States, but the United States has not yet decided whether to intervene. *Am. Civil Liberties Union v. Holder*, 673 F.3d 245, 249–50 (4th Cir. 2011) (citing S. Rep. No. 99-345, at 24–25 (1986)).

Given that the United States already declined to intervene, the United States respectfully requests that:

1. Relator's Complaint (including any amended complaints), the United States' Notice of Election to Decline Intervention, this Request, and the accompanying [Proposed] Order be unsealed;

2. All other papers filed or lodged to date in this action remain permanently under seal because such papers were provided by law to the Court for the sole purpose of discussing the content and extent of the government's investigation so that the Court could evaluate whether the seal and the deadline for making an election to intervene should be extended; and

3. Any future papers filed or lodged in this action should not be filed under seal absent a separate court order.

1 Counsel for Relator did not respond to an e-mail message notifying him that the
2 United States intended to seek the relief set forth above. The e-mail message was sent to
3 him on January 28, 2025

4 Respectfully submitted,

5 Dated: January 29, 2025

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DECLARATION RE: LACK OF NECESSITY FOR PROOF OF SERVICE

I, Frank D. Kortum, declare:

1. I am the Assistant United States Attorney who has been assigned
2 responsibility for handling the above-captioned action. I am a member of the Bar of the
3 State of California, and I have been duly admitted to appear before this Court. The
4 following is based on my personal knowledge.

2. I have examined Federal Rule of Civil Procedure (“Rule”) 5(a), which
3 provides as follows:

9 (a) Service: When Required.

10 (1) In General. Unless these rules provide otherwise, each of the following
11 papers must be served on every party:

12 (A) an order stating that service is required;

13 (B) a pleading filed after the original complaint, unless the court
14 orders otherwise under Rule 5(c) because there are numerous
15 defendants;

16 (C) a discovery paper required to be served on a party, unless the
17 court orders otherwise;

18 (D) a written motion, except one that may be heard ex parte; and

19 (E) a written notice, appearance, demand, or offer of judgment, or
20 any similar paper.

21 (2) If a Party Fails to Appear. No service is required on a party who is in
22 default for failing to appear. But a pleading that asserts a new claim for
23 relief against such a party must be served on that party under Rule 4.

24 (3) Seizing Property. If an action is begun by seizing property and no
25 person is or need be named as a defendant, any service required before the
26 filing of an appearance, answer, or claim must be made on the person who
27 had custody or possession of the property when it was seized.

3. The list of documents set forth in Rule 5(a)(1) does not include the document to which this Declaration is attached. The said document also is not a pleading that asserts “a new claim for relief” against any “party who is in default for failing to appear.” (Rule 5(a)(2).) Nor was the above-captioned action “begun by seizing property.” (Rule 5(a)(3).) Therefore, I believe that Rule 5(a) does not require the document to which this Declaration is attached to be served upon any party that has appeared in the above-captioned action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 29, 2025, at Los Angeles, California.

Frank Korten

FRANK D. KORTUM